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SIPDIS
SENSITIVE

PASS USTR FOR SULLIVAN, MELLE, GARDA
PASS PATENT AND TRADEMARK OFFICE FOR JENNIFER NESS
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SUBJECT: Canadians May Be Beginning to Understand the Importance of Protecting IPR

Ref: (A) Toronto 110 (B) 07 Toronto 466 (C) 07 Toronto 461 (D) 07 Toronto 366 (E) 07 Toronto 315

Sensitive But Unclassified - protect accordingly.

¶1. (U) Summary: On May 9, Steven Mitchell, Vice President of Intellectual Policy at the Entertainment Software Association (ESA) and Jason Kee, Director of Policy and Legal Affairs for the Entertainment Software Association of Canada (ESAC), described the importance of protecting intellectual property rights (IPR) to Ontario government officials. Mitchell and Kee said the entertainment software industry supports over 10,000 jobs in Canada, and Ontario is a global leader in digital media development. The massive development costs required to develop games (US\$10-30 million per game) make effective IPR protection crucial to the companies' financial viability. Canadian public opinion appears to be shifting towards supporting stronger IPR protection measures. ESAC is urging the Canadian federal government to bring IPR protection up to global standards. End Summary.

¶2. (U) On May 9, Steven Mitchell, VP of Intellectual Policy at ESA and Jason Kee, Director of Policy and Legal Affairs for ESAC, described the pivotal role IPR-related industries play in Ontario's economy to provincial policy advisors and researchers from the Ministries of Economic Development and Trade, Culture, Research and Innovation, Education, Attorney General, Government and Consumer Services, and Children and Youth Services. Mitchell's outreach efforts to key groups in Toronto, Montreal, and Ottawa were financed by Mission Canada Public Affairs.

Economic Importance of IPR Protection in Ontario

¶3. (U) Kee said Ontario is a global leader in developing digital media, and boasts some of world's top development studios. The province is North America's third largest entertainment software-developing jurisdiction after California and New York, and Canada is third largest globally after the U.S. and Japan. 21 of the top 100 selling games in North America and Europe were developed by Canadian studios. Between 1999 and 2007, the industry created 80,000 net new jobs in Ontario. The Canadian industry directly employs over 10,000 people (in programming, animation, visual effects, game and sound design, production, and marketing) and generates an estimated US\$2.5 billion in revenues annually. Most games developed in Canada are produced for export, but Canadian gaming sales in 2007 were US\$697 million, up 37% from 2006.

¶4. (U) The massive development costs required to develop games (US\$10-30 million per game) make effective IPR protection crucial to

the companies' financial viability. Kee cited the wildly popular, and somewhat controversial Grand Theft Auto IV (GTA IV), which cost US\$50 million to develop, and three years to make, as a good example. The sales from the commercially successful GTA IV will fund the development of other digital media games, and drive investment in research and development of new technology.

¶5. (U) According to Kee, for every GTA IV-like financial success, there are nine other less profitable software releases. Revenues from successful titles are used to offset the development costs of less successful products. Without effective IPR protection, this kind of labor intensive creative enterprise is not commercially viable, he argued. Kee said the smaller, independent studios are the most vulnerable because they often rely on revenue from a single game that took years to develop. He also noted that entertainment software development has led to advances in related technologies such as medical imaging and artificial intelligence.

Lax Canadian Laws Encourage Counterfeit Market

¶6. (SBU) Kee opined that ineffective Canadian border controls enable Asian importers to provide a steady, cheap supply of pre-burnt pirated optical discs, and circumvention devices in Canada, some of which are subsequently exported to the U.S. He explained that, in violation of WIPO Treaty standards, Canadian law does not prohibit circumventing technical protection measures (TPM)s that control access to and use of video game software (Note: TPMs prevent unauthorized exploitation and transmission of products, and enable features such as parental controls. End Note).

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¶7. (U) Since circumvention devices such as modification (mod) chips are not illegal in Canada, they are sold openly by Canadian retailers (e.g. Pacific Mall, ref (E)) and e-commerce sites. Industry investigators estimate that 20-30% of retail specialty stores in Toronto and Vancouver sell pirated goods. Twice as many gamers in Canada (34%) compared with the U.S. (17%) have acquired pirated games, and in Canada, on average, 22% of those Canadian gamers' collections are pirated games, compared with 6% of those in the U.S. According to the ESA, the cost to the U.S. and Canadian entertainment software industries is more than US\$3.5 billion annually (includes only physical game cartridges, not losses from illegal internet downloads).

Industry Calling for Stronger Canadian Laws

¶8. (U) According to the U.S.-based ESA, more than one million online video games are pirated globally each month. The top 10 infringing countries are: the U.S., Canada, Brazil, Spain, Italy, France, Germany, the UK, the Netherlands, and Sweden. In 2007 over 260,000 cases were traced to Canadian Internet Service Providers (ISPs). Canadian ISPs are not required to act upon notices of infringing content. The entertainment software industry wants the Canadian federal government to require ISPs to cooperate and take down sites that enable online piracy.

¶9. (U) ESAC is calling on the Canadian government to empower the Canada Border Services Agency (CBSA) to seize counterfeit goods; provide specific criminal and civil remedies for TPM circumvention and trafficking in circumvention devices to ensure compliance with the WIPO Treaties; strengthen civil remedies for retail piracy; increase damages and penalties under the Copyright Act; include piracy in the Proceeds of Crime legislation; and provide more resources and training for law enforcement officials.

Canadian Attitudes Changing

¶10. (U) Despite an inadequate Canadian legal framework to protect IPR, Canadian public opinion appears to be shifting. ESAC polling

found that 80% of Canadian adults believe that it is wrong to obtain pirated video games (85% of Canadians older than 35). 65% of Canadian teens (13-17) believe that it is wrong to obtain pirated video games. 69% of Canadian adults support or strongly support IPR protection for software, and 63% of Canadian adults support or strongly support stronger legal enforcement of IPR for software. This contrasts with what stakeholders have told us in past years that most Canadians are indifferent to piracy or would not support stronger IPR enforcement measures.

¶11. (SBU) Comment: We are pleased that Canadian public opinion appears to be shifting towards supporting stronger protection measures for IPR. This may make it harder for the small but extremely vocal group of IPR opponents to derail government efforts to bring Canadian IPR protection up to global standards. End Comment.

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